

whether the volunteer has agreed to be available around-the-clock or only during certain specified time periods; and whether the volunteer provides services as needed or throughout the year. An individual who volunteers to provide periodic services on a year-round basis may receive a nominal monthly or annual stipend or fee without losing volunteer status.

(f) Whether the furnishing of expenses, benefits, or fees would result in individuals' losing their status as volunteers under the FLSA can only be determined by examining the total amount of payments made (expenses, benefits, fees) in the context of the economic realities of the particular situation.

Subpart C—Fire Protection and Law Enforcement Employees of Public Agencies

GENERAL PRINCIPLES

§ 553.200 Statutory provisions: section 13(b)(20).

(a) Section 13(b)(20) of the FLSA provides a complete overtime pay exemption for "any employee of a public agency who in any workweek is employed in fire protection activities or any employee of a public agency who in any workweek is employed in law enforcement activities (including security personnel in correctional institutions), if the public agency employs during the workweek less than 5 employees in fire protection or law enforcement activities, as the case may be."

(b) In determining whether a public agency qualifies for the section 13(b)(20) exemption, the fire protection and law enforcement activities are considered separately. Thus, if a public agency employs less than five employees in fire protection activities, but five or more employees in law enforcement activities (including security personnel in a correctional institution), it may claim the exemption for the fire protection employees but not for the law enforcement employees. No distinction is made between full-time and part-time employees, or between employees on duty and employees on leave status, and all such categories

must be counted in determining whether the exemption applies. Individuals who are not considered "employees" for purposes of the FLSA by virtue of section 3(e) of the Act (including persons who are "volunteers" within the meaning of § 553.101, and "elected officials and their appointees" within the meaning of § 553.11) are not counted in determining whether the section 13(b)(20) exemption applies.

(c) The section 13(b)(20) exemption applies on a workweek basis. It is therefore possible that employees may be subject to maximum hours standard in certain workweeks, but not in others. In those workweeks in which the section 13(b)(20) exemption does not apply, the public agency is entitled to utilize the section 7(k) exemption which is explained below in § 553.201.

[52 FR 2032, Jan. 16, 1987; 52 FR 2648, Jan. 23, 1987]

§ 553.201 Statutory provisions: section 7(k).

(a) Section 7(k) of the Act provides a partial overtime pay exemption for fire protection and law enforcement personnel (including security personnel in correctional institutions) who are employed by public agencies on a work period basis. This section of the Act formerly permitted public agencies to pay overtime compensation to such employees in work periods of 28 consecutive days only after 216 hours of work. As further set forth in § 553.230 of this part, the 216-hour standard has been replaced, pursuant to the study mandated by the statute, by 212 hours for fire protection employees and 171 hours for law enforcement employees. In the case of such employees who have a work period of at least 7 but less than 28 consecutive days, overtime compensation is required when the ratio of the number of hours worked to the number of days in the work period exceeds the ratio of 212 (or 171) hours to 28 days.

(b) As specified in §§ 553.20 through 553.28 of subpart A, workers employed under section 7(k) may, under certain conditions, be compensated for overtime hours worked with compensatory time off rather than immediate overtime premium pay.

§ 553.202 Limitations.

The application of sections 13(b)(20) and 7(k), by their terms, is limited to public agencies, and does not apply to any private organization engaged in furnishing fire protection or law enforcement services. This is so even if the services are provided under contract with a public agency.

EXEMPTION REQUIREMENTS

§ 553.210 Fire protection activities.

(a) As used in sections 7(k) and 13(b)(20) of the Act, the term “any employee . . . in fire protection activities” refers to any employee (1) who is employed by an organized fire department or fire protection district; (2) who has been trained to the extent required by State statute or local ordinance; (3) who has the legal authority and responsibility to engage in the prevention, control or extinguishment of a fire of any type; and (4) who performs activities which are required for, and directly concerned with, the prevention, control or extinguishment of fires, including such incidental non-firefighting functions as housekeeping, equipment maintenance, lecturing, attending community fire drills and inspecting homes and schools for fire hazards. The term would include all such employees, regardless of their status as “trainee,” “probationary,” or “permanent,” or of their particular specialty or job title (e.g., firefighter, engineer, hose or ladder operator, fire specialist, fire inspector, lieutenant, captain, inspector, fire marshal, battalion chief, deputy chief, or chief), and regardless of their assignment to support activities of the type described in paragraph (c) of this section, whether or not such assignment is for training or familiarization purposes, or for reasons of illness, injury or infirmity. The term would also include rescue and ambulance service personnel if such personnel form an integral part of the public agency’s fire protection activities. See § 553.215.

(b) The term “any employee in fire protection activities” also refers to employees who work for forest conservation agencies or other public agencies charged with forest fire fighting responsibilities, and who direct or

engage in (1) fire spotting or lookout activities, or (2) fighting fires on the fireline or from aircraft or (3) operating tank trucks, bulldozers and tractors for the purpose of clearing fire breaks. The term includes all persons so engaged, regardless of their status as full time or part time agency employees or as temporary or casual workers employed for a particular fire or for periods of high fire danger, including those who have had no prior training. It does not include such agency employees as maintenance and office personnel who do not fight fires on a regular basis. It may include such employees during emergency situations when they are called upon to spend substantially all (i.e., 80 percent or more) of their time during the applicable work period in one or more of the activities described in paragraphs (b)(1), (2) and (3) of this section. Additionally, for those persons who actually engage in those fire protection activities, the simultaneous performance of such related functions as housekeeping, equipment maintenance, tower repairs and/or the construction of fire roads, would also be within the section 7(k) or 13(b)(20) exemption.

(c) Not included in the term “employee in fire protection activities” are the so-called “civilian” employees of a fire department, fire district, or forestry service who engage in such support activities as those performed by dispatchers, alarm operators, apparatus and equipment repair and maintenance workers, camp cooks, clerks, stenographers, etc.

[52 FR 2032, Jan. 16, 1987; 52 FR 2648, Jan. 23, 1987]

§ 553.211 Law enforcement activities.

(a) As used in sections 7(k) and 13(b)(20) of the Act, the term “any employee . . . in law enforcement activities” refers to any employee (1) who is a uniformed or plainclothed member of a body of officers and subordinates who are empowered by State statute or local ordinance to enforce laws designed to maintain public peace and order and to protect both life and property from accidental or willful injury, and to prevent and detect crimes, (2) who has the power to arrest, and (3)